



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007-1866

APR 13 2017

EXPRESS MAIL

B & B Recycling, LLC
105 West Birmingham Place
Broken Arrow, OK 74011
Attn: Rod Brumley

Re: Beechnut Nutrition Corp. Superfund Site, Canajoharie, Montgomery County, New York:
Administrative Order for A Removal Action, Index No. CERCLA-02-2017-2013

Dear Mr. Brumley:

Enclosed is Administrative Order for A Removal Action, Index No. CERCLA-02-2017-2013 ("Order"), which was issued on April 13, 2017 by the U.S. Environmental Protection Agency, Region 2 ("EPA") in connection with the Beechnut Nutrition Corp. Superfund Site in Canajoharie, New York.

As indicated in Paragraph 99 of the enclosed Order, you may request a conference with EPA within three (3) days of receipt of the Order. Pursuant to Paragraph 102 of the Order, you must notify EPA of your intent to comply with the Order within three (3) days of the Effective Date of the Order, as that term is defined in the Order.

Should you wish to request a conference, please contact me at (212) 637-3177.

Sincerely yours,

Walter S. M. Sainsbury
Assistant Regional Counsel
Office of Regional Counsel

Enclosure

cc:

Monette Brumley, Registered Agent
14801 South Memorial Drive
Bixby, OK 74008

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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IN THE MATTER OF THE
BEECHNUT NUTRITION CORP.
SUPERFUND SITE

Beech-Nut Nutrition Company and
B & B Recycling, LLC,

Respondents.

Proceeding under Section 106(a) of
the Comprehensive Environmental
Response, Compensation, and Liability
Act of 1980, as amended, 42 U.S.C.
§ 9606(a).

Index Number
CERCLA-02-2017-2013

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ADMINISTRATIVE ORDER FOR A
REMOVAL ACTION

I. JURISDICTION AND GENERAL PROVISIONS

1. This administrative order ("Order") is issued to the Beech-Nut Nutrition Company ("Beech-Nut") and B & B Recycling, LLC ("B&B") (hereinafter collectively, "Respondents") by the United States Environmental Protection Agency, Region 2 ("EPA") and requires Respondents to perform a removal action in connection with the Beechnut Nutrition Corp. Superfund Site ("Site"), located at 68-102 Church Street in the Village of Canajoharie, Montgomery County, New York.
2. This Order is issued to Respondents by EPA pursuant to the authority vested in the President of the United States under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 Federal Register 2926, January 29, 1987). This authority was further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B and to the Director of the Emergency and Remedial Response Division in Region 2 by Regional Delegation R-1200.
3. EPA has notified the New York State Department of Environmental Conservation ("NYSDEC") of this Order pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

4. This Order shall apply to and be binding upon Respondents and their directors, officials, employees, agents, successors and assigns. No change in the status or control of Respondents shall alter Respondents' responsibilities under this Order.
5. Respondents are jointly and severally liable for implementing all activities required by this Order. Compliance or noncompliance by either Respondent with any provision of this Order shall not excuse or justify noncompliance by the other Respondent. No Respondent shall interfere in any way with the performance of Work in accordance with this Order by the other Respondent. In the event of the insolvency or other failure of either Respondent to implement the requirements of this Order, the remaining Respondent shall complete all such requirements.
6. Until EPA notifies Respondents under Paragraph 97 that the Work has been completed, Respondents shall provide a copy of this Order to any successors before a controlling interest in Respondents' assets or property rights are transferred to the successor.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order or in an attachment to this Order, the following definitions shall apply:

- a. "Day" means a calendar day unless otherwise expressly stated. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business on the next working day.
- b. "Effective Date" means the date specified in Paragraph 98.
- c. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- d. "Party" or "Parties" means EPA and/or Respondents.
- e. "Respondents" shall mean Beech-Nut Nutrition Company and B & B Recycling, LLC.
- f. "Site" shall mean the Beechnut Nutrition Corp. Superfund Site including approximately 26.9 acres located at 68-102 Church Street in the Village of Canajoharie, Montgomery County, New York, which is identified as tax parcel 63.14-1-9.1. A Site map is attached hereto as Appendix A.
- g. "Waste" means (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents noted in (1), (2), or (3) above.
- h. "Work" shall mean all activities that Respondents are required to perform pursuant to this Order.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. The Site includes property located at 68-102 Church Street in the Village of Canajoharie, New York and identified as tax parcel number 63.14-1-9.1 (hereinafter, "Property"). The Property consists of approximately 26.9 acres of land that is bisected by the Canajoharie Creek. The Property is bordered by Interstate 90 to the north, residential and business sections of Canajoharie to the south and west, and Interstate 90 entrance and exit ramps to the east. The Property contains many buildings, warehouses, and support structures. A Site map is attached hereto as Appendix A.

9. Beech-Nut and/or its predecessor(s), including Beech-Nut Nutrition Corp., operated a cannery and food manufacturing facility at the Site from approximately 1891 until the summer of 2010. In 2006, the Property and its buildings were flooded and suffered damage. Beech-Nut thereafter commenced moving its production facility to Florida, New York and did so in June 2010, terminating all manufacturing operations at the Property.

10. In late 2011, Beech-Nut took actions to prepare for the demolition of structures on the Property and/or the sale of the Property including auctioning much of its production and office equipment. In 2012, Beech-Nut retained an environmental consultant to conduct a pre-demolition asbestos survey of the Property in contemplation of possible demolition of buildings west of Canajoharie Creek. The survey found materials containing asbestos both on the interior and exterior of the buildings on the western portion of the Property. Some of this asbestos, including that on the exterior of the buildings, was in a friable state. It was estimated that the abatement of the asbestos on the western side of the Property alone would cost \$1,694,000.

11. As part of the efforts to demolish structures in 2012, Pyramid Brokerage Company ("Pyramid"), on behalf of Beech-Nut, initially approached Great Western Steel, LLC ("Great Western Steel") and Jeffrey Wendel, Great Western Steel's Acquisition Director, to demolish buildings on the Property. Great Western Steel's field of expertise was building demolition. Beech-Nut was considering demolishing buildings on the Property in order to turn some or all of the Property into a park. The demolition arrangement was never finalized due to lack of funding on the part of Great Western Steel.

12. In late 2012, metal materials, including copper piping and stainless steel, were removed from buildings on the Property to the west of the Canajoharie Creek.

13. After Beech-Nut's demolition plans in 2012 did not come to fruition, Beech-Nut, through Pyramid, again approached Great Western Steel and Mr. Wendel, this time regarding the potential sale of the Property. Mr. Wendel and Great Western Steel connected Beech-Nut with TD Development, LLC ("TD LLC"), which expressed interest in purchasing the Property. From the inception of these negotiations in 2013, Beech-Nut knew that the purchaser planned to demolish buildings on the Property, as the purchase of the Property was predicated upon TD LLC receiving a demolition permit.

14. Three draft and executed contracts of sale/purchase agreements between Beech-Nut and TD LLC demonstrate that the parties intended to demolish structures and were aware of the need for asbestos abatement.

15. In the early Spring of 2013, Beech-Nut offered the Property to TD LLC for approximately \$1 million, but reduced the price to \$800,000 by June of 2013. By June 2013, the heating system at the Property was shut down and had been replaced by portable heaters. In late June or July 2013, Beech-Nut agreed again to reduce the sale price to \$350,000. Then shortly thereafter, Beech-Nut further reduced the price to \$300,000.

16. In October 2013, an environmental consultant for Mr. Wendel identified significant amounts of asbestos on the eastern portion of the Property, some of which was friable, and requested that Beech-Nut either address the asbestos or decrease the purchase price. Mr. Wendel estimated that addressing asbestos contamination on the Property would cost between approximately \$1.2 million to \$1.8 million. Beech-Nut agreed to reduce the purchase price if TD LLC accepted the Property "As is/ Where is".

17. On December 5, 2013, TD LLC and Beech-Nut closed on the Property for a final purchase price of \$200,000. The purchase price reflected an approximately 80% discount from the original asking price and was only two percent of the Property's assessed value of \$8,734,821.
18. A demolition permit was issued by the Village of Canajoharie to TD LLC on December 6, 2013.
19. After purchase of the Property, TD LLC retained a number of different asbestos abatement contractors in order to begin abatement activities and demolish buildings on the eastern portion of the Property. Some of the asbestos removed during these initial efforts was placed in roll-off containers. The New York State Department of Labor ("DOL") issued three notices of violation to abatement contractors and TD LLC from February to July of 2014 for uncontainerized asbestos debris and failing to conduct building surveys prior to abatement activities.
20. On October 1, 2014, TD LLC and B&B signed a "Demolition Management & Salvage Purchase Agreement" for the demolition and removal of all structures on the eastern portion of the Property in return for B&B receiving the salvage rights to all materials.
21. In December 2014, TD LLC sold the Property to Mr. Wendel who, at the time, was doing business as T D Development Inc. In furtherance of the demolition contract, B&B began to demolish buildings 72, 73, and 74, located on the eastern portion of the Property, in late December 2014, but without complete asbestos abatement. B&B completed demolition of buildings 72, 73, and 74 in March 2015, but left behind construction and demolition debris piles near the location of the former buildings. That same month, the Village of Canajoharie issued a "Stop Work" order to B&B, instructing B&B to remove existing debris piles from its prior demolition activities before recommencing work. In May 2015, the Village of Canajoharie cited B&B for material drifting onto Interstate 90 from the debris piles, and directed B&B to remove the piles by June 8, 2015. B&B failed to address the debris piles containing construction materials from the demolition of buildings 72, 73, and 74.
22. On December 1, 2015 NYSDEC requested that EPA evaluate the Site for a removal action.
23. On February 23 and 24, 2016 and March 10, 2016, EPA's On-Scene Coordinator ("OSC") conducted the field work for a Removal Site Evaluation ("RSE") at the Property. The RSE identified the presence of asbestos in the outdoor debris piles, on partial walls remaining after the demolition, and in five roll-off containers. Cinder-blocks and masonry in the debris piles coated with a white substance were sampled and found to contain asbestos and the coating was observed to be in a friable state. Other samples taken on the Property also revealed the presence of friable asbestos in the exterior coating of walls on the eastern portion of the Property; a coating which was similarly observed on the western portion. In addition, samples of the material contained in the roll-offs revealed the presence of friable asbestos as well. The OSC observed that materials containing asbestos, including the exterior wall coating, that had been

identified in the 2012 pre-demolition asbestos survey, remained on-Site and in a friable state. Evidence of vandalism was also observed.

24. In January 2017, EPA permitted the owner of four of the five roll-off containers to remove its roll-offs and properly dispose of the material in the roll-offs, which included asbestos pipe-wrap.

25. On September 21, 2016, EPA finalized an Action Memorandum that documented the release or threat of release of asbestos at or from the Property and the need for a CERCLA removal action to abate the threat to human health, welfare, or the environment based on conditions at the Site. The Action Memorandum authorized EPA to address the most immediate risks at the Site, including approximately 10,000 tons of masonry block and other debris containing friable asbestos in piles exposed to the elements.

26. Respondents are each a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

27. Respondents are responsible parties with respect to the Site within the meaning of Section 107(a) of CERCLA, 42 U.S.C. §9607(a), in that Respondents arranged for the disposal or treatment of a hazardous substance and/or were owners or operators of the Site at a time of disposal.

28. On August 5, 2016 and November 15, 2016, EPA notified Respondents B&B and Beech-Nut, respectively, of their status as potentially responsible parties ("PRPs") for the Site, and requested that they enter into negotiations to voluntarily undertake the removal activities required to address the release and threatened release of asbestos at the Site.

29. The Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

30. Asbestos is a "hazardous substance" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

31. The conditions at the Site, including the presence of unsecured and exposed asbestos, constitutes a "release" or threat of "release" of a hazardous substance into the environment within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

32. Changes in the pleural membrane of the lungs of people can be caused by breathing lower levels of asbestos, through the introduction of blebs (small blisters), or plaques. Pleural plaques can occur in those working with asbestos products and in people living near areas with elevated levels of asbestos in the environment. Effects on breathing due to the presence of pleural plaques alone are not usually serious. However, prolonged exposure can lead to thickening of the pleural membrane, which may restrict breathing. Workers exposed to high concentrations of asbestos fibers have a greater risk of developing asbestosis or mesothelioma.

33. Respondents declined EPA requests to enter into negotiations regarding performance of the removal action at the Site.

V. DETERMINATIONS

34. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). These factors include, but are not necessarily limited to, the following conditions:

- a. Actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants; and
- b. Weather conditions may cause hazardous substances or pollutants to migrate or to be released.

35. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

The actions required by this Order are necessary to protect the public health or welfare or the environment, are in the public interest, and are consistent with CERCLA and the NCP.

VI. ORDER

36. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and other information available to EPA, it is hereby ordered that Respondents shall undertake a removal action to address asbestos at the Site in accordance with this Order as described herein. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein. With regard to the Work contemplated by this Order, Respondents shall cease and desist from implementing any such Work until approved by EPA pursuant to this Order.

A. Designation of Contractor and Designated Project Coordinator

37. Within five (5) days after the Effective Date of this Order, Respondents shall select a coordinator, to be known as the Designated Project Coordinator, and submit the name, address, qualifications and telephone number of the Designated Project Coordinator to EPA. The Designated Project Coordinator shall be responsible on behalf of Respondents for oversight of the implementation of this Order. The Designated Project Coordinator shall not be an attorney engaged in the practice of law. He or she shall have the technical expertise sufficient to adequately oversee all aspects of the Work contemplated by this Order. The Designated Project Coordinator shall be knowledgeable at all times about all matters relating to the Work being performed under this Order.

38. Selection of the Designated Project Coordinator shall be subject to approval by EPA in writing. If EPA disapproves a proposed Designated Project Coordinator, Respondents shall propose a different person and notify EPA of that person's name, address, telephone number, and qualifications within five (5) days following EPA's disapproval. Respondents may change their Designated Project Coordinator provided that EPA has received written notice at least five (5) days prior to the desired change. All changes of the Designated Project Coordinator shall be subject to EPA approval.

39. EPA correspondence related to this Order will be sent to the Designated Project Coordinator on behalf of Respondents. To the extent possible, the Designated Project Coordinator shall be present on-Site or readily available for EPA to contact during all working days and be retained by Respondents at all times until EPA issues a notice of completion of the Work. Notice by EPA in writing to the Designated Project Coordinator shall be deemed notice to Respondents for all matters relating to the Work under this Order and shall be deemed effective upon receipt.

40. All activities required of Respondents under the terms of this Order shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by Federal, New York State, and/or local governments consistent with Section 121 of CERCLA, 42 U.S.C. § 9621, and all Work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

41. Respondents shall retain at least one contractor to perform the Work. Respondents shall notify EPA of the name and qualifications of a proposed contractor within fourteen (14) days of the Effective Date. Respondents shall also notify EPA of the name and qualifications of any other contractor or subcontractor proposed to perform Work under this Order at least five (5) days prior to commencement of such Work. With respect to any proposed contractor, Respondents shall demonstrate that the proposed contractor demonstrates compliance with the Uniform Federal Policy for Implementing Quality Systems ("UFP-QS"), EPA-505-F-03-001, March 2005; Uniform Federal Policy for Quality Assurance Project Plans ("UFP-QAPP"), Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005 and March 2012 or newer, by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The qualifications of the persons undertaking the Work for Respondents shall be subject to EPA's review for verification that such persons meet minimum technical background and experience requirements.

42. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors proposed by Respondents to conduct the Work. If EPA disapproves in writing of any of Respondents' proposed contractors to conduct the Work, Respondents shall propose a different contractor within seven (7) days of receipt of EPA's disapproval.

43. Respondents shall provide a copy of this Order to each contractor and subcontractor approved and retained to perform the Work required by this Order. Respondents shall include in all contracts or subcontracts entered into for Work required under this Order provisions stating that such contractors or subcontractors, including their agents and employees, shall perform activities required by such contracts or subcontracts in compliance with this Order and all

applicable laws and regulations. Respondents shall be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Order.

B. Description of Work

44. Respondents shall perform a removal action at the Site in accordance with this Order, CERCLA, the NCP, EPA relevant guidance documents, and other applicable Federal and New York State laws and regulations including DOL rules and regulations regarding Industrial Code Rule 56, 12 NYCRR Part 56. Respondents shall perform, at a minimum, all actions necessary to implement the Work herein. The actions to be implemented with respect to the Site shall include, but may not be limited to, the following items:

- a. Application of best management practices such as the use of water and/or a stabilizing agent to limit migration of asbestos during the removal action;
- b. Management of all temporary measures taken to address asbestos;
- c. Bulk removal of asbestos debris piles identified in the EPA Action Memorandum, and certification, upon debris removal, that no residual asbestos remains on the ground where the debris piles were located;
- d. Characterization of exterior walls at the Property for the presence of friable asbestos followed by appropriate mitigation measures, including, but not limited to, stabilizing agents;
- e. Demolition and disposal of partial exterior walls identified in the EPA Action Memorandum;
- f. Segregation, decontamination, and/or removal of scrap metal piles;
- g. Removal of contents of remaining roll-off container;
- h. Off-site disposal of any additional hazardous substances identified during the course of the removal action;
- i. Securing of the Site during the removal action to prevent access;
- j. Provision of necessary air monitoring; and
- k. Off-site disposal of hazardous waste and/or substances in compliance with the EPA Off-Site Rule, 40 CFR § 300.440.

45. Within thirty (30) days of the Effective Date, Respondents shall submit to EPA for review and approval a detailed Site Operating Plan ("SOP") for the Work. The SOP shall be submitted in accordance with this Order, CERCLA, the NCP, EPA's relevant guidance documents, 12 NYCRR Part 56, the National Emissions Standards for Hazardous Air Pollutants

("NESHAPS") regulations promulgated at 40 C.F.R. Part 61, Subpart M, and other applicable Federal and New York State laws and regulations. The SOP shall include the following:

- a. Site-specific Work Plan;
- b. Transportation and Disposal Plan ("T&D");
- c. Site Health and Safety Plan ("HASP");
- d. Quality Assurance Project Plan ("QAPP");
- e. Air Monitoring Plan; and
- f. Green Strategy Plan. The Green Strategy Plan should follow EPA Region 2's *Clean and Green Policy* which may be found at: <http://www.epa.gov/greenercleanups/epa-region-2-clean-and-green-policy>.

46. The Site-specific Work Plan shall discuss the proper characterization, staging, handling, sampling and analysis, and disposal of all materials containing hazardous substances, pollutants or contaminants at the Site, and at a minimum, address the following:

- a. Proposed time line for the completion of all work activities and all other requirements of this Order. The schedule shall provide for completion of all field work no later than three (3) months from the date of approval of the SOP.
- b. Procedures for characterization of demolition debris for reuse/recycling or disposal and documentation of procedures used to perform such characterization.
- c. Procedures for preventing the release of hazardous substances to the environment during staging, handling, sampling, and disposal; and
- d. A plan for providing Site security including, but not limited to, measures to be taken to keep unauthorized personnel from entering restricted work areas and the Site for the duration of the cleanup.

47. The T&D Plan shall outline procedures for the proper transporting and disposing of all hazardous substances, pollutants and contaminants, hazardous waste, and any solid waste generated during the Work. This plan shall include the identification of the proposed disposal facilities for all waste streams and include waste profile information, facility acceptance documentation, and analytical characterization of each waste stream. In addition, this plan shall include the following information to be documented by Respondents:

- a. the transporter and disposal identification numbers for each proposed transporter and disposal company;

- b. documentation of the current permit status of proposed transporters and disposal facilities; and
- c. the date of the most recent New York State or EPA regulatory inspection of each proposed disposal company, and any special provisions or conditions attached to the disposal permits as a result of the most recent inspection.

After permitted disposal facilities have been finalized, all wastes shall be properly manifested and shipped off-Site via permitted transporters. All final signed manifests, bills of lading and certificates of destruction for such disposal shall be provided by Respondents to the OSC identified in Paragraph 58, and included in weekly and/or monthly progress reports.

48. The HASP shall ensure the protection of the public health and safety during performance of Work under this Order. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at <http://www.epa.gov/nscep>, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at http://www.epaosc.org/_HealthSafetyManual/manual-index.htm. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. The plan shall also include contingency planning. Respondents shall incorporate all changes to the plan required by EPA and shall implement the plan during the duration of the removal action. The HASP, at a minimum, shall address the following:

- a. Delineation of the work zones;
- b. Personnel monitoring requirements, paying particular attention to monitoring specific job functions in compliance with OSHA requirements;
- c. Personal protective equipment requirements and upgrade thresholds based on real-time air monitoring;
- d. Demonstration that all personnel, including subcontractor personnel, have current certifications as per applicable OSHA regulations;
- e. Decontamination procedures for personnel and equipment exiting any hot zone; and
- f. Compliance with OSHA requirements for Health and Safety Plans.

If any of the Work performed by Respondents pursuant to this Order requires alteration of the HASP, Respondents shall submit to EPA for review such amendments to the HASP prior to the performance of such work.

49. The QAPP shall provide for the following:

- a. The QAPP shall include detailed procedures, methods, and sampling parameters to be implemented to sample and analyze all Wastes handled pursuant to this Order.
- b. All sampling and analyses performed pursuant to this Order shall conform to EPA policy and guidance regarding sampling, quality assurance, quality control, data validation, and chain of custody procedures. Respondents shall ensure said procedures are consistent with and the UFP-QAPP, Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005 and March 2012 or newer.
- c. If any of the Work performed by Respondents pursuant to this Order requires alteration of the QAPP, Respondents shall submit to EPA for review and approval proposed amendments to the QAPP.
- d. Respondents shall conduct the appropriate level of data verification/validation and provide the specified data deliverables as provided in the EPA-approved QAPP.
- e. The QAPP shall require that any laboratory utilized by Respondents is certified for the matrix/analyses which are to be conducted for any work performed pursuant to this Order, by one of the following accreditation/certification programs: USEPA Contract Laboratory Program, National Environmental Laboratory Accreditation Program ("NELAP"), American Association for Laboratory Accreditation, or a certification issued by a program conducted by a state, and acceptable to EPA, for the analytic services to be provided. The QAPP shall require Respondents to submit laboratory certificates from such accreditation programs that are valid at the time samples are analyzed. If a specific analytical service is unavailable from a certified laboratory, EPA may within its discretion, approve Respondents' utilization of a laboratory that is not certified. EPA approval shall be based on Respondents' submittal of a written request, submittal of the laboratory quality assurance plan, and the laboratory's demonstration of capability through the analysis of Performance Evaluation samples for the constituents of concern.
- f. Respondents shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondents pursuant to this Order. In addition, Respondents shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance the Agency's "EPA QA Field Activities Procedure," CIO 2105-P-02.1 (9/23/2014) (<https://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>). Respondents shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Order meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" (<https://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements>) and that the laboratories perform all analyses using EPA-accepted methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (<https://www.epa.gov/clp>),

SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (<https://www.epa.gov/hw-sw846>), "Standard Methods for the Examination of Water and Wastewater" (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (<https://www3.epa.gov/ttnamti1/airtox.html>). However, upon approval by EPA, after a reasonable opportunity for review and comment by the State, Respondents may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondents shall ensure that all laboratories they use for analysis of samples taken pursuant to this Order have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network laboratories, laboratories accredited under NELAP, or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondents shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Order are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

g. The QAPP shall provide for electronic submittal of sampling data in accordance with EPA Region 2 policies, guidelines, and formats. The Region 2 Electronic Data Deliverable ("EDD") is a standardized format for all electronic submittals to EPA Region 2. The most recent EDD Guidance and Requirements can be found at: <https://www.epa.gov/superfund/region-2-superfund-electronic-data-submission>.

50. The Air Monitoring Plan ("AMP") shall provide for the following:

- a. Work zone air monitoring;
- b. Perimeter air monitoring;
- c. Community air monitoring;
- d. Particulate monitoring, response levels and actions;
- e. Monitoring as required by DOL rules and regulations (12 NYCRR Part 56); and
- f. Dust control.

51. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents while performing Work under this Order. Respondents shall notify EPA not less than seven (7) Working Days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.
52. EPA either will approve the SOP or will require modifications thereto pursuant to Section D (Plans and Reports Requiring EPA Approval), below.
53. Within ten (10) days after EPA's approval of the SOP, Respondents shall commence the Work described in the EPA-approved SOP. Respondents shall fully implement the EPA-approved SOP in accordance with the terms and schedule therein and in accordance with this Order.
54. Respondents shall notify EPA of the names and addresses of all off-Site Waste treatment, storage, or disposal facilities selected by Respondents to receive Wastes from the Site. Respondents shall provide such notification to EPA for approval at least five (5) Working Days prior to off-Site shipment of such Wastes.
55. At the time of completion of all field activities required by this Order, demobilization shall include sampling if sampling related to the demobilization is deemed necessary by EPA, and proper disposal or decontamination of protective clothing, remaining laboratory samples taken pursuant to this Order, and any equipment or structures constructed to facilitate the cleanup.
56. Respondents shall conduct the Work required hereunder in accordance with CERCLA, the NCP, 12 NYCRR Part 56, NESHAPS regulations promulgated at 40 C.F.R. Part 61, Subpart M, as well as applicable provisions of the following guidance documents, and of other guidance documents referenced in the following guidance documents: EPA Region 2's *Clean and Green Policy*, cited above, and Guide to Management of Investigation-Derived Wastes (OSWER Publication 9345.3-03FS, January 1992), as they may be amended or modified by EPA.

C. On-Scene Coordinator, Other Personnel, and
Modifications to EPA-Approved Work Plan

57. All activities required of Respondents under the terms of this Order shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by the federal government, and New York State, and all work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.
58. The EPA OSC for the Site is: Keith Glenn, Removal Action Branch, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 2890 Woodbridge Avenue, Building 205, Edison, New Jersey 08837, telephone number 732-321-4454. EPA will notify Respondents' Project Coordinator if EPA designates a different OSC for this Site.

59. EPA, including the OSC, or his/her authorized representative, will conduct oversight of the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP. The OSC shall have the authority to halt, conduct, or direct any Work required by this Order, or to direct any other response action undertaken by EPA or Respondents at the Site consistent with this Order. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

60. As appropriate during the course of implementation of the actions required of Respondents pursuant to this Order, Respondents or their consultants or contractors, acting through the Designated Project Coordinator, may confer with EPA concerning the required actions. Based upon new circumstances or new information not in the possession of EPA on the Effective Date, the Designated Project Coordinator may request, in writing, EPA approval of modification(s) to the EPA-approved Work Plan. Only modifications approved by EPA in writing shall be deemed effective. Upon approval by EPA, such modifications shall be deemed incorporated in this Order and shall be implemented by Respondents.

D. Plans and Reports Requiring EPA Approval

61. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Order, Respondents shall have fourteen (14) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondents shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondents a written statement to that effect.

62. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Order is disapproved by EPA, even after being resubmitted following Respondents' receipt of EPA's comments on the initial submittal, Respondents shall be deemed to be out of compliance with this Order. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondents to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs of doing so from Respondents. Respondents shall implement any such item(s) as amended or developed by EPA.

63. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Order. EPA may modify those documents and/or perform or require the performance of additional work unilaterally.

64. All plans, reports and other submittals required to be submitted to EPA pursuant to this Order, upon approval by EPA, shall be deemed to be incorporated in and an enforceable part of this Order.

E. Reporting

65. Commencing on the thirtieth (30th) day after the Effective Date, unless there is field work at the Site, Respondents shall provide monthly, or as otherwise requested by EPA, progress reports. Whenever, during the implementation of this Order, Respondents are engaged in active field work, Respondents shall provide EPA with daily oral progress reports, as well as written progress reports every seven (7) days during active field work. The first written progress report during active field work shall be submitted within seven (7) days of the commencement of field work. After active field work has been completed, Respondents shall resume monthly written progress reports, commencing 30 days after the submission of the last weekly written progress report. All progress reports shall fully describe all actions and activities undertaken pursuant to this Order. Such progress reports shall, among other things: (a) describe the actions taken toward achieving compliance with this Order during the previous week; (b) include all results of sampling and tests and all other data received by Respondents after the most recent progress report submitted to EPA; (c) describe all actions which are scheduled for the next week; (d) provide other information relating to the progress of Work as is customary in the industry; and (e) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays.

66. Within thirty (30) days after completion of the Work required by the SOP, Respondents shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with this Order. The Final Report shall include:

- a. A synopsis of all Work performed under this Order;
- b. A detailed description of all EPA-approved modifications to the SOP which occurred during Respondents' performance of the Work required under this Order;
- c. A listing of quantities and types of materials removed from the Site or handled on-Site;
- d. A discussion of removal and disposal options considered for those materials;
- e. A listing of the ultimate destination of those materials;
- f. A presentation of the analytical results of all sampling and analyses performed, including QAPP data and chain of custody records;
- g. Accompanying appendices containing all relevant documentation generated during the Work (e.g. manifests, bills of lading, invoices, bills, contracts, certificates of destruction and permits);
- h. An accounting of expenses incurred by Respondents in performing the Work; and

i. The following certification signed by a person who supervised or directed the preparation of the Final Report:

"I certify that the information contained in and accompanying this document is true, accurate, and complete."

67. EPA either will approve the Final Report or will require modifications thereto pursuant to Section D., above.

68. The Final Report and other documents submitted by Respondents to EPA which purport to document Respondents' compliance with the terms of this Order shall be signed by a responsible official of Respondents or by the Designated Project Coordinator. For purposes of this Paragraph, a responsible official is an official who is in charge of a principal business function.

69. The Work Plan, the Final Report, and other documents required to be submitted to EPA under this Order shall be sent to the following addressees:

1 paper copy and 1 electronic copy to:

U.S. Environmental Protection Agency, Region 2
Removal Action Branch
2890 Woodbridge Avenue
Building 205
Edison, New Jersey 08837
Attn: Keith Glenn
glenn.keith@epa.gov
732-321-4454

1 electronic copy to:

U.S. Environmental Protection Agency, Region 2
Office of Regional Counsel, New York/Caribbean Superfund Branch
290 Broadway, 17th Floor
New York, NY 10007-1866
Attn: Walter Sainsbury
sainsbury.walter@epa.gov
212-637-3177

1 paper copy to:

New York State Department of Environmental Conservation
Robert W. Schick, P.E., Director
Division of Environmental Remediation,

625 Broadway
Albany, NY 12233-7012
518-402-9706

G. Oversight

70. During the implementation of the requirements of this Order, Respondents and their contractor(s) and subcontractor(s) shall be available for such conferences with EPA and inspections by EPA or its authorized representatives as EPA may determine are necessary to adequately oversee the Work being carried out or to be carried out by Respondents, including inspections at the Site and at laboratories where analytical work is being done hereunder.

71. Respondents and their employees, agents, contractor(s) and consultant(s) shall cooperate with EPA in its efforts to oversee Respondents' implementation of this Order.

H. Community Relations

72. Respondents shall cooperate with EPA in providing information relating to the Work required hereunder to the public. As requested by EPA, the Respondents shall participate in the preparation of all appropriate information disseminated to the public; participate in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site; and provide a suitable location for public meetings, as needed.

I. Access to Property and Information

73. EPA, NYSDEC, and their designated representatives, including, but not limited to, employees, agents, contractor(s) and consultant(s) thereof, shall be permitted to observe the Work carried out pursuant to this Order. Respondents shall at all times permit EPA, NYSDEC, and their designated representatives full access to and freedom of movement at the Site and any other premises where Work under this Order is to be performed for purposes of inspecting or observing Respondents' progress in implementing the requirements of this Order, verifying the information submitted to EPA by Respondents, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be related to EPA oversight of the implementation of this Order.

74. EPA designates Respondents as EPA's authorized representatives for purposes of access to the Site, for purposes of consent to access the Property which EPA obtained pursuant to Administrative Order Directing Compliance with Request for Access, Index No. CERCLA-02-2017-2003 ("Access Order"), issued by EPA on November 9, 2016 to T D Development Inc. T D Development Inc. is the owner of record of the Property. In the event that action under this Order is to be performed on property that is owned by persons other than Respondents, or the Property owner revokes its consent to access under the Access Order, Respondents shall use their best efforts to obtain access agreements from such persons within ten (10) Working Days of the Effective Date for purposes of implementing the requirements of this Order. Such agreements shall provide access not only for Respondents, but also for EPA and its designated representatives or agents, as well as NYSDEC and its designated representatives or agents. Such

agreements shall specify that Respondents are not EPA's representatives with respect to liability associated with Site activities. If such access agreements are not obtained by Respondents within the time period specified herein, Respondents shall immediately notify EPA of their failure to obtain access and shall include in that notification a summary of the steps Respondents have taken to attempt to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondents, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondents cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondents shall perform all other activities not requiring access to that property. Respondents shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

75. Upon request, Respondents shall provide EPA with access to all records and documentation related to the conditions at the Site, including hazardous substances found at or released from the Site, and the actions conducted pursuant to this Order except for those items, if any, subject to the attorney-client or work product privilege. All data, information and records created, maintained, or received by Respondents or their contractor(s) or consultant(s) in connection with implementation of the Work under this Order, including, but not limited to, contractual documents, invoices, receipts, work orders and disposal records shall, without delay, be made available to EPA upon request, subject to the same privileges specified above in this Paragraph. EPA shall be permitted to copy all such documents. Respondents shall submit to EPA upon receipt the results of all sampling or tests and all other technical data generated by Respondents or their contractor(s), or on Respondents' behalf, in connection with the implementation of this Order.

76. Notwithstanding any other provision of this Order, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statutes or regulations.

J. Record Retention, Documentation, Availability
of Information

77. Respondents shall preserve all documents and information relating to Work performed under this Order, or relating to Waste materials found on or released at or from the Site, for six (6) years after completion of the Work required by this Order. At the end of the six-year period, Respondents shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondents shall provide EPA with the originals or copies of such documents and information.

78. All documents submitted by Respondents to EPA in the course of implementing this Order shall be available to the public unless claimed as privileged or confidential pursuant to applicable law. In addition, EPA may release all such documents to NYSDEC, and NYSDEC may make those documents available to the public unless Respondents conforms to applicable New York State law and regulations regarding confidentiality. Respondents shall not assert a claim of privilege or confidentiality regarding any monitoring or hydrogeologic data, any

information specified under Section 104(e)(7)(F) of CERCLA, or any other chemical, scientific or engineering data relating to the Work performed hereunder.

K. Off-Site Shipments

79. All hazardous substances, pollutants, or contaminants removed from the Site pursuant to this Order for off-Site treatment, storage, or disposal shall be treated, stored, or disposed of in compliance with: (a) Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3); (b) Section 300.440 of the NCP; (c) RCRA; (d) the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; and (e) all other applicable federal and state requirements.

80. If hazardous substances from the Site are to be shipped outside of New York State, Respondents shall provide prior notification of such Waste shipments in accordance with the EPA Memorandum entitled "Notification of Out-of-State Shipments of Superfund Site Wastes" (OSWER Directive 9330.2-07, September 14, 1989). At least five (5) Working Days prior to such Waste shipments, Respondents shall notify the environmental agency of the accepting state of the following: (a) the name and location of the facility to which the Wastes are to be shipped; (b) the type and quantity of Waste to be shipped; (c) the expected schedule for the Waste shipments; (d) the method of transportation and name of transporter; and (e) the treatment and/or disposal method of the Waste streams.

81. Certificates of destruction must be provided to EPA upon Respondents' receipt of such. These certificates must be included in the weekly or monthly progress reports and in the Final Report.

L. Compliance with Other Laws

82. All actions required pursuant to this Order shall be performed in accordance with all applicable New York State and federal laws and regulations except as provided in CERCLA § 121(e)(1), 42 U.S.C. §9621(e)(1), and 40 CFR § 300.415(j). In accordance with 40 CFR §300.415(j), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or New York State environmental or facility siting laws. *See* "Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," (OSWER Directive No. 9360.3-02, August 1991).

83. Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. §9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on-Site. Where any portion of the Work requires a federal or New York State permit or approval, Respondents shall submit timely applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Order is not, nor shall it be construed to be, a permit issued pursuant to any federal or New York State statute or regulation.

M. Emergency Response and Notification of Releases

84. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. §9603, requires reporting to the National Response Center (telephone number (800) 424-8802), Respondents shall also immediately orally notify the Chief of the Removal Action Branch of the Emergency and Remedial Response Division of EPA, Region II, at (732) 321-6658, or the EPA Region 2 Emergency 24-hour Hot Line at (732) 548-8730, and the OSC of the incident or Site conditions. Respondents shall also submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken, if any, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting requirements of this Paragraph are in addition to, not in lieu of, reporting under CERCLA Section 103, 42 U.S.C. §9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. §11004.

85. In the event of any action or occurrence during Respondents' performance of the requirements of this Order which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding Paragraph. Respondents shall take such action in accordance with applicable provisions of this Order including, but not limited to, the Health and Safety Plan. In the event that EPA determines that (a) the activities performed pursuant to this Order, (b) significant changes in conditions at the Site, or (c) emergency circumstances occurring at the Site pose a threat to human health or the environment, EPA may direct Respondents to stop further implementation of any actions pursuant to this Order or to take other and further actions reasonably necessary to abate the threat.

86. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

N. Modifications

87. No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligations to obtain such formal approval as may be required by this Order and to comply with all requirements of this Order.

O. Delay in Performance

88. Any delay in performance of the Work under this Order that, in EPA's judgment, is not properly justified by Respondents under the terms of the Paragraph below, shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents' obligations to perform all obligations fully under the terms and conditions of this Order.

89. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's OSC as soon as Respondents know that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within two (2) days after notifying EPA by telephone, Respondents shall provide written notification fully describing the nature of the delay, any justification for the delay, any reason why Respondents should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that have been or will be taken to mitigate the effect of the delay. Increased cost or expense associated with the implementation of the activities called for in this Order is not a justification for any delay in performance.

P. Enforcement and Reservation of Rights

90. a. Notwithstanding any other provision of this Order, failure of Respondents to comply with any provision of this Order may give rise to an allegation by EPA that Respondents may be subject to civil penalties of up to fifty-three thousand, nine hundred seven dollars (\$53,907) per violation per day, as provided in Sections 109 and 122(l) of CERCLA, 42 U.S.C. §§ 9609 and 9622(l), and the Debt Collection and Improvement Act of 1996 (see Civil Monetary Penalty Inflation Adjustment Rule, 81 Fed. Reg. 43091 (July 1, 2016)). EPA may also allege that Respondents also may be subject to punitive damages in an amount at least equal to but not more than three times the amount of any costs incurred by the United States as a result of such failure to comply with this Order, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Order or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

b. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondents under Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any response costs incurred by the United States related to this Order or the Site.

Q. Other Claims

91. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents or Respondents' employees, agents, contractors, or consultants in carrying out any action or activity pursuant to this Order. The United States or EPA shall not be held out as or deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

92. Nothing in this Order constitutes or shall be construed as a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Order for any liability that Respondents or other persons may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for injunctive relief, costs, damages, and interest under Sections 106(a) and 107 of CERCLA, 42 U.S.C. §§ 9606(a) and 9607. Nothing herein shall constitute a finding that Respondents are the only responsible party with respect to the release and threatened release of hazardous substances at and from the Site. Nothing in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties.

93. Nothing in this Order shall be construed to constitute preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2), and 40 CFR § 300.700(d).

94. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. §9613(h).

R. Insurance

95. At least two (2) days prior to commencing any Work at the Site, Respondents shall submit to EPA a certification that Respondents or their contractors and subcontractors have commercial general liability insurance with limits of \$10 million, for any one occurrence, and automobile insurance with limits of \$5 million, combined single limit, naming EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondents pursuant to this Order. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

S. Financial Assurance

96. Respondents shall demonstrate their ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within fourteen (14) days of the Effective Date one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondents have sufficient assets to perform the Work. Respondents shall demonstrate financial assurance in an amount no less than \$2,968,675, which is EPA's current estimated cost of the Work to be performed by Respondents under this Order. If EPA determines that the financial assurances submitted by

Respondents pursuant to this Paragraph are inadequate, Respondents shall, within fourteen (14) days after receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting the requirements of this Paragraph. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondents shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Order.

T. Termination and Satisfaction

97. Upon a determination by EPA (following its receipt of the Final Report referred to in Paragraph 66 above) that the Work required pursuant to this Order has been fully carried out in accordance with this Order, EPA will so notify Respondents in writing.

U. Opportunity to Confer, Effective Date

98. This Order shall be effective five (5) days after receipt by Respondents, unless a conference is timely requested pursuant to Paragraph 99 below. If such a conference is timely requested, this Order shall become effective one (1) day following the date the conference is held, unless the Effective Date is modified by EPA. All times for performance of ordered activities shall be calculated from the Effective Date.

99. Respondents may, within three (3) days after receipt of this Order, request a conference with EPA to discuss this Order. If requested, the conference shall occur within twenty-one (21) days of Respondents' receipt of this Order. The conference may be held in person or by telephone or videoconference.

100. If a conference is held, Respondents may present any information, arguments, or comments regarding this Order. This conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order. It does not give Respondents a right to seek review of this Order or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondents' request, Respondents may appear in person or by an attorney or other representative.

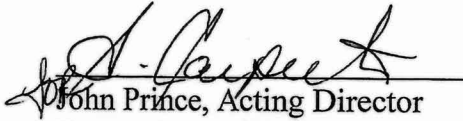
101. A request for a conference must be made by telephone to Walter Sainsbury, Assistant Regional Counsel, Office of Regional Counsel, EPA Region 2, telephone (212) 637-3177, followed by written confirmation emailed that day to Mr. Sainsbury at sainsbury.walter@epa.gov.

V. Notice of Intent to Comply

102. Respondents shall provide, not later than three (3) days after the Effective Date, written notice to EPA stating whether they will comply with the terms of this Order. If Respondents do not unequivocally commit to perform the Work required by this Order, EPA shall deem that Respondents have violated this Order and have failed or refused to comply

with this Order. Respondents' written notice shall describe, using facts that exist on or prior to the Effective Date, any "sufficient cause" defenses asserted by Respondents under Sections 106(b) and 107(c)(3) of CERCLA. Respondents' written notice shall be sent to Walter Sainsbury, Assistant Regional Counsel, Office of Regional Counsel, EPA Region 2, 290 Broadway, 17th floor, New York, New York 10007-1866. The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be an acceptance of Respondents' assertions.

U.S. ENVIRONMENTAL PROTECTION AGENCY


John Prince, Acting Director

Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2

4.13.17
Date of Issuance

Appendix A

Beechnut Nutrition Corp. Superfund Site

Canajoharie, NY

